

IT 02-18

Tax Type: Income Tax

Issue: Withholding Tax – Failure to File Return/Make Payment

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

THE DEPARTMENT OF REVENUE)	Docket No.	01-IT-0000
OF THE STATE OF ILLINOIS)	FEIN	00-0000000
v.)		
ABC ENGINEERING, INC.,)	John E. White,	
Taxpayer.)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Melissa Connell, McDermott Will & Emery, appeared for ABC Engineering, Inc.; Ralph Bassett, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

This matter arose after ABC Engineering, Inc. (“ABC” or “taxpayer”) protested a Notice of Deficiency the Illinois Department of Revenue (“Department”) issued to it to assess a late payment penalty for ABC’s failure to make quarter-monthly payments of the Illinois income tax it withheld from the wages paid to its employees during 1999.

The issue is whether taxpayer exercised ordinary business care and prudence when it made monthly payments, instead of quarter-monthly payments, of the income taxes it withheld from the wages of its employees during 1999. I am including in this recommendation findings of fact and conclusions of law. I recommend that the NOD be finalized as issued.

Findings of Fact:

1. Taxpayer is an “S” corporation that conducts an engineering business in Westchester, Illinois. *E.g.*, Department Ex. 1 (NOD); Taxpayer Ex. 1 (Department letter addressed to ABC); Hearing Transcript (“Tr.”) 31, (testimony of John Doe

- (“John Doe”), ABC’s chief financial officer).
2. Jane Doe (“Jane Doe”) is ABC’s payroll manager. Tr. pp. 8-11 (Jane Doe).
 3. Jane Doe prepared ABC’s federal and Illinois withholding tax returns and made its withholding tax payments during 1999. Tr. pp. 8-9, 23-24 (Jane Doe), 41 (John Doe).
 4. For each week of 1999, ABC withheld more than \$1000 in Illinois income tax from the wages it paid to its employees. Department Ex. 3 (Department prepared schedule showing, inter alia, amounts of Illinois income tax ABC withheld from its employees wages for each week in 1999, and the dates on which ABC remitted such withheld amounts to the Department); Taxpayer Ex. 2 (Illinois withholding worksheet prepared by Jane Doe at the Department’s request).
 5. Throughout 1999, Jane Doe made monthly payments of the Illinois income tax ABC withheld from its employees’ wages. Taxpayer Ex. 4, p. 2; Department Ex. 1, p. 2; Tr. p. 11 (Jane Doe).
 6. With each monthly payment of withholding tax Jane Doe mailed to the Department, Jane Doe was also required to prepare and include with the payment an Illinois income tax form IL-501 (hereinafter, “IL-501”). Taxpayer Ex. 5, p. 10. John Doe signed the Illinois withholding tax returns ABC filed for each quarter of 1999. Tr. pp. 45-46 (John Doe).
 7. Jane Doe obtained each IL-501 from a booklet of withholding income tax forms the Department sent to ABC prior to the beginning of 1999. Taxpayer Ex. 5 (original booklet titled, “Withholding Income Tax Forms for Tax Year 1999”, bearing ABC’s preprinted name, address and Illinois Business Registration

- number); *see* Tr. pp. 15-16 (Jane Doe).
8. The withholding tax form booklet the Department sent to ABC contained 11 (eleven) pages of instructions, 58 pages of withholding tax forms, and several pages of address labels for a taxpayer to affix to the envelopes in which they sent the various withholding forms. Taxpayer Ex. 5.
 9. On page 3 of the booklet's instructions, under the heading "General Information about this booklet", the Department wrote: "This booklet contains your yearly withholding payment forms. The number and type of forms in this booklet is based on your **current** filing status." Taxpayer Ex. 5, p. 3 (emphasis original). ABC's 1999 booklet includes 41 remaining IL-501 forms. Taxpayer Ex. 5.
 10. Page 6 of the instructions within ABC's withholding booklet specifically informs a reader whether it is required to make monthly, semi-monthly, or quarter-monthly payments of tax withheld. Taxpayer Ex. 5, p. 6. Pages 7 and 8 of the instructions identify the dates on which form IL-501 and the accompanying withholding payments are due, depending on how often an employer is required to make withholding payments. *Id.*, pp. 7-8. Page 10 of ABC's booklet provides general and step-by-step instructions for preparing an IL-501. *Id.*, p. 10.
 11. Jane Doe, the individual responsible for preparing and filing ABC's Illinois withhold tax forms, never read any of the instructions within ABC's withholding tax form booklet during 1999. Tr. p. 23 (Jane Doe).
 12. During 1999, ABC retained an accounting firm, Nykiel, Carlin & Co., to prepare an annual audit package for ABC's line of credit lender, and to perform income tax planning and preparation of corporate and individual income tax forms. Tr.

pp. 30-31, 40 (John Doe). Its accounting firm played no role in ABC's federal or state withholding tax matters. Tr. p. 31 (John Doe).

13. In early February 2000, ABC received a letter from a Department employee, the body of which stated:

A recent review of your withholding account shows you may not be making your payments when they are due. Therefore, your account has been forwarded to the Income Tax Discovery Section of the Audit Bureau for further investigation.

You must complete the enclosed worksheets. We will compare our records to the worksheets and determine if you are still required to make payments quarter-monthly. If we determine that you are required to make payments less often, we will update our records and tell you your new payment requirements (i.e., how often you must make payments). If our review shows that you are still required to send payments at the end of each quarter-monthly period, you could be subject to a late-payment penalty and interest for each payment not received when it was due.

Please return the completed worksheet to us in the enclosed envelope by March 8, 2000. If you do not, we will automatically assess a penalty for all quarters of 1999.

If you have any questions, please write us or call our Springfield office weekdays between 8:00 a.m. and 4:00 p.m. Our address and phone number are below.

Taxpayer Ex. 1 (2/8/00 letter from Department to taxpayer).

14. Jane Doe completed the worksheets included within the Department's letter and returned them to the Department. Taxpayer Ex. 2 (copy of completed worksheets); Tr. p. 11 (Jane Doe).

15. In the latter part of March 2000, ABC received a letter from the Department, the body of which stated:

This letter is to inform you that the Illinois Withholding Worksheets that we requested you complete have been received. Your cooperation in this matter is greatly

appreciated!

Due to the large amount of taxpayers contacted, and due to the number of responses received, your withholding account has not yet been reviewed. Your account will be reviewed in the order in which the Withholding Worksheets were received. The expected review date for your account is 2-4 weeks from the date of this letter.

Thank you for your cooperation. If you have any questions, please write me or call the Springfield office weekdays between 8:00 a.m. and 4:00 p.m. The address and telephone number are below.

Taxpayer Ex. 3 (3/20/00 letter from Department to taxpayer).

16. On April 26, 2000, the Department issued a letter to ABC stating that: the Department had reviewed ABC's completed worksheets; the review confirmed that ABC was properly registered as a quarter monthly filer; and that, since ABC had paid over its withholding amounts on a monthly basis, instead of on a quarter-monthly basis, it had failed to timely pay the amounts of Illinois income tax withheld during 1999. Taxpayer Ex. 4, p. 1. A statement included with the letter specifically identified the amount of penalty and interest the Department determined was attributable for each quarter of 1999. *Id.*, p. 2. The letter notified ABC that it could pay the penalty if it agreed with the Department's determination. *Id.*, p. 1.
17. On February 9, 2001, the Department issued an NOD to ABC which proposed to assess a negligence penalty for ABC's failure to make quarter-monthly payments of its withholding taxes. Department Ex. 1 (NOD). The statement portion of the NOD provided, in pertinent part:

It is determined with respect to the calendar quarters listed below as within the calendar year 1999, that you withheld Illinois Income Taxes from the compensation paid to your

employees and that the amount of tax actually deducted and withheld under this Act was not remitted in its entirety as prescribed in Section 704 & 705 of the Illinois Income Tax Act.

Under Article 10, particularly Section 1002(a) and (c)(1) [*sic*] it is determined that due to negligence or intentional Disregard of rules and regulations, you are subject to a penalty.

Department Ex. 1, p. 2.¹

18. ABC timely protested the proposed deficiency, and asked for hearing.

Conclusions of Law:

When the Department introduced the NOD into evidence under the certificate of the Director, it presented prima facie proof that ABC was liable for the penalties proposed to be assessed. 35 ILCS 735/3-3(f); 35 ILCS 1002(e)(1). The Department's prima facie case is a rebuttable presumption. Branson v. Department of Revenue, 68 Ill. 2d 247, 261, 659 N.E.2d 961, 968 (1995). A taxpayer cannot overcome the presumption merely by denying the accuracy of the Department's assessment, or merely by denying knowledge of a tax deficiency. Branson, 68 Ill. 2d at 267, 659 N.E.2d at 971 ("... lack of willfulness is not proved simply by denying conscious awareness of a tax deficiency that could have been easily investigated by an inspection of corporate records."); A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3d 826, 833, 527 N.E.2d 1048, 1053 (1st Dist. 1988). Instead, a taxpayer has the burden to present evidence that is consistent, probable and closely identified with its books and records, to show that the assessment is not correct. Fillichio v. Department of Revenue, 15 Ill. 2d 327, 333, 155 N.E.2d 3, 7

¹ There is no § 1002(c)(1) within the IITA. 35 ILCS 5/1002(c). The Department's revision of the NOD, however, shows that the penalty is based on § 1002(c), which imposes a penalty on an employer's nonwillful failure to pay withholding tax. Department Ex. 3, p. 2; *see also*, Department's Brief, p. 7.

(1958); PPG Industries, Inc. v. Department of Revenue, 328 Ill. App. 3d 16, __, 765 N.E.2d 34, 48 (1st Dist. 2002).

Section 704(b) of the Illinois Income Tax Act (“IITA”) requires an employer to make quarter-monthly payments whenever the aggregate amount withheld by such employer (together with amounts previously withheld and not paid to the Department) exceeds \$1,000 per quarter-monthly period. 35 ILCS 5/704²; 86 Ill. Admin. Code § 100.7300. Here, ABC withheld more than \$1,000 for each quarter-monthly period during 1999. Taxpayer Ex. 2; Department Ex. 3. Thus, there is no dispute that, during 1999, Illinois law required ABC to make quarter-monthly payments of the Illinois income taxes it withheld from its employees' wages. 35 ILCS 5/704(b).

The NOD based the proposed penalty on § 1002(a) and (c) of the IITA, which provides:

² Section 704(b) provides:

(b) Quarter Monthly Payments: Returns. Every employer who deducts and withholds or is required to deduct and withhold tax under this Act shall, on or before the third banking day following the close of a quarter monthly period, pay to the Department or to a depository designated by the Department, pursuant to regulations prescribed by the Department, the taxes so required to be deducted and withheld, whenever the aggregate amount withheld by such employer (together with amounts previously withheld and not paid to the Department) exceeds \$1,000. For purposes of this Section, Saturdays, Sundays, legal holidays and local bank holidays are not banking days. A quarter monthly period, for purposes of this subsection, ends on the 7th, 15th, 22nd and last day of each calendar month. Every such employer shall for each calendar quarter, on or before the last day of the first month following the close of such quarter, and for the calendar year, on or before January 31 of the succeeding calendar year, make a return with respect to such taxes in such form and manner as the Department may by regulations prescribe, and pay to the Department or to a depository designated by the Department all withheld taxes not previously paid to the Department.

35 ILCS 5/704(b).

Failure to Pay Tax.

(a) Negligence. If any part of a deficiency is due to negligence or intentional disregard of rules and regulations (but without intent to defraud) there shall be added to the tax as a penalty the amount prescribed by Section 3-5 of the Uniform Penalty and Interest Act.

(c) Nonwillful failure to pay withholding tax. If any employer, without intent to evade or defeat any tax imposed by this Act or the payment thereof, shall fail to make a return and pay a tax withheld by him at the time required by or under the provisions of this Act, such employer shall be liable for such taxes and shall pay the same together with the interest and the penalty provided by Sections 3-2 and 3-3, respectively, of the Uniform Penalty and Interest Act and such interest and penalty shall not be charged to or collected from the employee by the employer.

35 ILCS 5/1002(a), (c). By the time of hearing, however, the Department based the penalty solely upon taxpayer's late payment of the withholding amounts. Department Ex. 3, p. 2 (labeling them "3-3(b-5)(1) Penalt[ies] on 501 Returns"). Thus, I will limit my discussion to the application of a penalty authorized by § 3-3 of Illinois' Uniform Penalty and Interest Act ("UPIA"), and will not address the negligence penalty set forth in UPIA § 3-5.

Section 3-3 of the UPIA provides, in pertinent part:

(b-5) This subsection is applicable to returns due on and after January 1, 1998 and on or before December 31, 2000. A penalty of 20% of the tax shown on the return or the tax required to be shown due on the return shall be imposed for failure to pay:

(1) the tax shown due on the return on or before the due date prescribed for payment of that tax, an amount of underpayment of estimated tax, or an amount that is reported in an amended return other than an amended return timely filed as required by subsection (b) of Section 506 of the Illinois Income Tax Act (penalty for late payment or nonpayment of admitted liability); or

(c) For purposes of the late payment penalties, the basis of the penalty shall be the tax shown or required to be shown on a return, whichever is applicable, reduced by any part of the tax which is paid on time and by any credit which was properly allowable on the date the return was required to be filed.

(f) If the taxpayer has failed to file the return, the Department shall determine the correct tax according to its best judgment and information, which amount shall be prima facie evidence of the correctness of the tax due.

35 ILCS 735/3-3(b-5), (c).

Section 3-8 of the UPIA provides that penalties imposed by §§ 3-3, 3-4, and 3-5 shall not apply if the taxpayer shows that its failure to file a return or pay a tax when due was due to reasonable cause. 35 ILCS 735/3-8. It further provides that reasonable cause shall be determined in each situation in accordance with the rules and regulations promulgated by the Department. *Id.* During 1999, the Department had promulgated a regulation in which it defined reasonable cause and described how it would administer the UPIA. 86 Ill. Admin. Code § 700.400. That regulation provides, "... whether a taxpayer acted with reasonable cause shall be made on a case by case basis taking into account all pertinent facts and circumstances. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine his proper tax liability and to file and pay his proper liability in a timely fashion." 86 Ill. Admin. Code § 700.400(b). The regulation further provides that, "[a] taxpayer will be considered to have made a good faith effort to determine and file and pay his proper tax liability if he exercised ordinary business care and prudence in doing so. A determination of whether a taxpayer exercised ordinary business care and prudence is dependent upon the clarity of the law or its interpretation

and the taxpayer's experience, knowledge, and education. ***” 86 Ill. Admin. Code § 700.400(c).

Summary of Arguments

ABC argues that it exercised ordinary business care and prudence when it continued to make monthly payments of the Illinois income tax it withheld because it was “[u]naware of any change in its filing status, ... [and] merely continued a long-standing payment schedule.” Taxpayer’s Post-Trial Brief (“Taxpayer’s Brief”), p. 4. ABC asserts that it is in a situation similar to the one described in DuMont Ventilation Co. v Department of Revenue, 99 Ill. App. 3d 263, 425 N.E.2d 606 (3d Dist. 1981), where the Illinois appellate court determined that the taxpayer in that case should not be subject to a late payment penalty. Taxpayer’s Brief, pp. 4-6. It makes the same argument regarding the situation described in a Department administrative decision decided in taxpayer’s favor and published in 2001. *Id.*, p. 6.

The Department responds that, despite ABC’s arguments, the evidence taxpayer offered at hearing does not show that it acted with ordinary and business care and prudence when attempting to make timely payments of the taxes it withheld from its employees’ wages. The Department distinguishes the different facts described in DuMont Ventilation and the administrative decision cited by ABC and the facts in this case. *Id.*, pp. 6-9 (discussing DuMont), 9-10 (administrative case). Most importantly, it points out that, throughout 1999, ABC had in its possession actual notice of when its withholding payments were due, but that Jane Doe, the ABC employee charged with making timely withholding payments, never even bothered to read the instructions that were part of ABC’s withholding forms booklet.

Analysis

After reviewing the evidence and the arguments, I agree with the Department that ABC has not introduced credible evidence to show that it acted with ordinary business care and prudence when attempting to make timely withholding payments in 1999. To begin, ABC's claimed lack of awareness of a change in its filing status does not take into account what actually happened during 1999, or whether it acted reasonably then. The parties do not dispute the fact that, throughout 1999, ABC's level of withholding required it to make quarter-monthly payments. Department Ex. 3, p. 2; Taxpayer Ex. 2. This case, therefore, does not involve a situation where ABC's filing status changed during any period for which a penalty was assessed. To the extent that ABC's level of withholding rose from a level where it was required to make monthly payments to a level where it was required to make quarter-monthly payments, that change would have occurred before 1999. ABC introduced no evidence to show when such a change might have occurred, and the Department did not impose any penalties for periods prior to 1999.

Related to this argument is ABC's assertion that the Department could have easily discovered whether ABC was filing inappropriately and notified it of that fact but did not. Taxpayer's Brief, pp. 5-6. The Department disputes that assertion by pointing out that the amount of a monthly withholding payment made to the Department does not inform it as to how often an employer pays its employees. Department's Brief, p. 7-8. The Department makes the entirely reasonable observation that it can fully evaluate an employer's compliance with the IITA's withholding tax provisions only through the audit process. *Id.* I agree. The legislature triggered the different statutory payment schedules (annual, quarterly, monthly, semi-monthly and quarter-monthly) on the level of taxes

withheld. There can be no doubt that an employer is in the better position to know when its own payroll, and payroll schedule, combine to meet the various statutory thresholds for the different withholding payment schedules.

More fundamentally, taxpayer's argument, that the Department could have notified it that it was not making timely withholding payments but failed to do so, effectively shifts the burden of compliance with IITA § 704(b) from the taxpayer to the Department. What the evidence in this case makes clear is that ABC received actual notice of when its withholding payments were due when it received the 1999 withholding tax forms booklet the Department mailed to it. Taxpayer Ex. 5, pp. 5-9. What is also clear is that the person responsible for filing ABC's withholding returns and making timely payments of its withholding taxes never read the instructions contained in that booklet. Tr. p. 23 (Jane Doe). Given those facts, ABC's argument must be understood to be that the Department's actual written notice to an employer, in the form of instructions that specifically detail when an employer's withholding payments are due, is not enough notice. Apparently, ABC thinks that the Department must also perform a continuing, real-time review of an employer's monthly IL-501 forms — an ability the Department contends does not exist absent an audit — after which the Department must again notify the employer if the possibility exists that it is not making timely withholding payments, before a § 1002(c) late payment penalty may be assessed. I simply cannot read IITA § 1002(c) or UPIA § 3-3(b-5) to mean what ABC suggests.

There is another inference to draw from ABC's argument that the Department could have notified it that it was not making timely withholding payments but failed to do so, coupled with its proffer of testimony that ABC had never been subjected to a late

payment penalty previously. Tr. pp. 15 (Jane Doe), 35 (John Doe). Even if that testimony were true, the implied argument is that the Department should be estopped from imposing a penalty for 1999 because it had not previously enforced, against ABC, IITA § 704(b)'s requirement that it make quarter-monthly withholding payments. In analyzing this argument, one might imagine that it is being advanced not by someone trying to avoid a tax penalty, but by one seeking to avoid an administrative penalty imposed for, let's say, an improper environmental discharge, or for material errors made on a company's annual report required to be published pursuant to SEC regulations. Would the argument — since the agency never discovered and sought to correct my errors before, it should not be allowed to do so now — be entertained? I think not, for the simple reason that an administrative agency's failure to discover and/or correct a person's prior violations does not preclude it from performing authorized enforcement actions once a violation is discovered.

Illinois law, moreover, clearly supports that conclusion. Estoppel is the equitable remedy invoked, as justice requires, "... where a party by his statements or conduct leads another to do something he would not have done but for the statements or conduct of the other party. The party claiming the estoppel must have relied on the acts or representations of the other and have had no knowledge or convenient means of knowing the true facts." Hickey v. Illinois Central Railroad Co., 35 Ill. 2d 427, 447, 220 N.E.2d 415, 425 (1966). While the Illinois supreme court has held that estoppel may, in rare circumstances, be applied against the State, as it was in Hickey, it has always adhered to the rule that the "... mere nonaction of governmental officers is not sufficient to work an estoppel and ... before the doctrine can be invoked against the State or a municipality

there must have been some positive acts which may have induced the action of the adverse party” Hickey, 35 Ill. 2d at 448, 220 N.E.2d at 426. Moreover, “[i]t is firmly established that where the public revenues are involved, public policy ordinarily forbids the application of estoppel to the state.” Austin Liquor Mart v. Department of Revenue, 51 Ill. 2d 1, 4, 280 N.E.2d 437, 439 (1972). Thus, the Department’s alleged failure to discover that ABC may have not been making quarter-monthly withholding tax payments when it should have been doing so prior to 1999 does not preclude it from imposing penalties for ABC’s failure to make timely payments during 1999. Additionally, there is no evidence that ABC was ever positively instructed by the Department that it should be filing monthly returns at a time when it was withholding more than \$1,000 in tax per week from its employees’ wages. In fact, for the year at issue, ABC had been given actual notice that an employer that withheld more than \$1,000 in tax each quarter-monthly period was required to make quarter-monthly payments of such tax. Taxpayer Ex. 5, pp. 6-8.

ABC also asserts that it is in substantially the same position as the taxpayer in DuMont Ventilation and as the taxpayer described in a contested case hearing decision published by the Department. Taxpayer’s Brief, pp. 4-6. The Department responds that what occurred in DuMont Ventilation did not, in fact, occur to ABC. Specifically, it points out that DuMont involved an employer that did not know about a recent change in Illinois law which, for the first time, required employers to begin making quarter monthly withholding tax payments if the amount of taxes withheld exceeded a certain threshold. As the Department notes, Illinois law has required quarter monthly payments, depending on the level of an employer’s particular payroll, since 1976. Department’s Brief, p. 7; 35

ILCS 5/704 (West’s Smith-Hurd ed. 2000) (Historical and Statutory Notes). It further notes that the \$1,000 per week threshold for making quarter-monthly withholding payments was enacted in 1984. Department’s Brief, p. 6; 35 **ILCS 5/704** (West’s Smith-Hurd. ed.) (Historical and Statutory Notes). The Department also cites to the UPIA’s reasonable cause regulation, which provides that, “[i]n the absence of new or unusual circumstances, most filing and payment requirements are common knowledge or are readily available to most taxpayers. If taxpayer did all that could be reasonably expected of him or her and was still unable to file or pay on time, reasonable cause may be present.” 86 Ill. Admin. Code § 700.00(f)(5). Here, ABC received actual notice of its filing and payment requirements when it received its 1999 withholding forms booklet, and it did not even bother to read the instructions included in that booklet. As a matter of fact, ABC is not in the same position as DuMont Ventilation was in 1977.

As to ABC’s argument regarding the Department’s abatement of a late payment penalty in the published administrative hearings decision ABC cites, it may or may not have been in the same position as the taxpayer in that case. The critical difference between those cases lies in the nature of the facts and arguments presented in that case, and the facts and arguments presented here. Specifically, the employer in ABC, Inc. (the fictitious name used for the actual employer in the published administrative decision) may well have also been given actual notice of when its withholding payments were due, but that critical fact was apparently never offered as evidence in that case. *See* IT 01-14, pp. 2-3 (findings of fact). Here, counsel for the Department did a commendable job of both presenting and drawing out relevant facts at hearing. He then articulated cogent, well-reasoned arguments — supported by Illinois case law, statutes and regulations —

why the evidence admitted at hearing did not support ABC's claims that it acted reasonably. Thus, and regardless what was decided in another case, the facts of this case show that ABC did not act with ordinary business care and prudence when it ignored the specific instructions it actually received from the Department regarding when its withholding payments were due, and thereby, failed to make timely withholding payments. Department Exs. 1, 3; Taxpayer Ex. 5; Tr. p. 23 (Jane Doe).

Finally, ABC argues that, like the taxpayer in DuMont and in the ABC, Inc. case, it also hired an accountant that did not inform it that it was required to make quarter-monthly payments of Illinois withholding tax. At hearing, however, ABC's chief financial officer testified that ABC's accountant had no responsibilities to review its withholding tax returns or procedures. Tr. p. 31 (John Doe). Thus, there is no evidence whatever to show that ABC's failure to make timely withholding payments was its accountant's fault.

Conclusion:

I conclude that ABC has not introduced evidence showing that it acted with ordinary business care and prudence when it made monthly payments of Illinois withholding tax, instead of the quarter-monthly payments it was required by law to make. ABC had actual written notice of when its withholding payments were due, and it failed to read that notice. I recommend, therefore, that the Director finalize the NOD as issued, with interest to accrue pursuant to statute.

5/6/02
Date

Administrative Law Judge